

AO 241 (Rev. 5/83)

ORIGINALPETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

05 - 237

United States District Court		District
Name <i>DERIOUS J. JOHNSON</i>	Prisoner No. <i>00260324</i>	Case No. <i>0304007340</i>
Place of Confinement <i>DELAWARE CORRECTIONAL CENTER 1181 PADDOCK ROAD SMYRNA, DE 19977</i>		
Name of Petitioner (include name under which convicted) <i>DERIOUS J. JOHNSON</i>		Name of Respondent (authorized person having custody of petitioner) <i>V. THOMAS CARROLL AND M JANE BRADY</i>
The Attorney General of the State of: <i>M JANE BRADY</i>		

PETITION

- Name and location of court which entered the judgment of conviction under attack
*NEW CASTLE COUNTY SUPERIOR COURT
WILM. DE 19801*
- Date of judgment of conviction *10/21/03*
- Length of sentence *"NATURAL LIFE"*
- Nature of offense involved (all counts)
1st DEGREE RAPE

By mail
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 2005 APR 25 PM 4:25
 FILED
 CLERK U.S. DISTRICT COURT
 DISTRICT OF DELAWARE

- What was your plea? (Check one)
 - Not guilty ☒
 - Guilty ☐
 - Nolo contendere ☐
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - Jury ☒
 - Judge only ☐
- Did you testify at the trial?
Yes ☒ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court - *DELAWARE SUPREME COURT*
 (b) Result *"AFFIRMED"*
 (c) Date of result and citation, if known *7/20/04*
 (d) Grounds raised *(2) TWO*

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court
 (2) Result
 (3) Date of result and citation, if known
 (4) Grounds raised

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court
 (2) Result
 (3) Date of result and citation, if known
 (4) Grounds raised

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court *N.E.C. SUPERIOR COURT AND DELAWARE SUPREME COURT*
 (2) Nature of proceeding *N.C.C.S.C. THERE WAS AN RULE 61 POST-CONVICTION FILLED AND FOR DELAWARE SUPREME COURT THERE WAS AN WRIT OF HABEAS CORPUS FILLED.*
 (3) Grounds raised *(8) GROUNDS WERE RAISED IN N.C.C.S.C.*
(2) GROUNDS WERE RAISED IN DEL. SUPREME COURT.

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- (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☒

(5) Result

(6) Date of result

- (b) As to any second petition, application or motion give the same information:

(1) Name of court *DELAWARE SUPREME COURT*

(2) Name of proceeding *WRIT OF HABEAS CORPUS*

(3) Grounds raised *(2) TWO*

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes ☐ No ☒

(5) Result

(6) Date of result

- (c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

- (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

A. Ground One: Racially Biased Jury. Defendant had an All-White Jury which was Unconstitutionally Selected.

SUPPORTING FACTS: ON 10/16/03 DEFENDANT stated to His Counsel that He wasn't Comfortable with the Counsel's Selection AND IMPANELED OF AN All-White Jury. AND DID NOT WANT TO PROCEED TO TRIAL UNDER THOSE TYPE OF CIRCUMSTANCES. AND DEFENDANT'S Counsel stated to the DEFENDANT that it did NOT MATTER to DEFENDANT. DEFENDANT ASSERTS THAT HIS SIXTH AMENDMENT RIGHTS WERE VIOLATED.

B. Ground Two: "INEFFECTIVE ASSISTANCE OF COUNSEL"

SUPPORTING FACTS: ON 10/17/03 INEFFECTIVE ASSISTANCE OF COUNSEL WAS COMMITTED WHEN DEFENDANT'S Counsel Failed to OBJECT TO THE PROSECUTOR ATTEMPTING to Elicit TESTIMONY FROM THE DEFENDANT ABOUT PRIOR CRIMES WHICH WAS TOTALLY IRRELEVANT TO THE CASE-IN-CHIEF. DEFENDANT Counsel Failed to OBJECT ABOUT THE CROSS-EXAMINATION OF DEFENDANT'S TESTIMONY. OR EVEN DURING THE CROSS-EXAMINATION OF THE DEFENDANT. Counsel ALSO Failed. AND DID NOT REQUEST A D.R.E. 609 HEARING, OR A D.R.E. 404(B) HEARING ABOUT ADMISSIBILITY OF DEFENDANT'S CHARACTER OR PRIOR BAD ACTS EVIDENCE WHICH PREJUDICED THE DEFENDANT, AND PREJUDICED THE MINDS OF THE JURY INTO THINKING THAT DEFENDANT WAS A BAD PERSON OR CRIMINAL. THIS WAS A SMEAR TATIC DELIBERATELY USED BY THE PROSECUTOR. AND DEFENDANT'S Counsel DEFINITELY KNOWS OF THESE TATICS. AND DEFENDANT'S Counsel IS SUPPOSED TO OBJECT AND REQUEST A D.R. 609 AND D.R.E. 404(B) HEARING OUT OF THE PRESENCE OF THE JURY TO ELIMINATE THIS TYPE OF PREJUDICIAL line OF QUESTIONING FROM OCCURRING IN THE FIRST PLACE. DEFENDANT STRONGLY ASSERTS THAT HIS Counsel VIOLATED HIS SIXTH AMENDMENT RIGHT TO Counsel. AND DUE TO Counsel's MULTIPLE ERRORS COMMITTED AT TRIAL, THE DEFENDANT CONVICTION SHOULD BE REVERSED.

SUPPORTING FACTS: ON OCTOBER 16TH 17TH OF 2003 AND ON OCTOBER 20TH OF 2004, THE TRIAL COURT JUDGE EXHIBITED AND DISPLAYED JUDICIAL BIAS DURING THE TRIAL AND DURING THE POST-CONVICTION PROCEEDINGS. (RULE 61 POST-CONVICTION RELIEF). THE TRIAL JUDGE COMMITTED ("REVERSIBLE ERROR" BY ALLOWING EVIDENCE OF DEFENDANT'S PRIOR DRUG CONVICTION WHICH WAS IRRELEVANT TO THE CASE-IN-CHIEF, WHICH ALSO HAD ABSOLUTELY NOTHING TO DO WITH THE RAPE ALLEGATIONS THAT THE STATE BROUGHT AGAINST THE DEFENDANT. FURTHERMORE, THE ANIMOSITY THAT THE TRIAL JUDGE HAS AGAINST THE DEFENDANT IS PLAINLY OBVIOUS IN THE POST-CONVICTION RELIEF DECISIONS (WHICH ARE INCLUDED FOR ^{JUDGE ATTACHMENTS} display) BY THE JUDGE'S ACID REMARKS AND COMMENTS TO THE DEFENDANT ABOUT RAISING A CONSTITUTIONAL ISSUE ERRORS THAT WERE COMMITTED AT THE DEFENDANT TRIAL. THE TRIAL JUDGE WAS SO CONFUSED ABOUT THE POST-CONVICTION RELIEF PROCESS THAT THE DEFENDANT HAD TO WRITE THE PRESIDENT JUDGE AND THE DELAWARE SUPREME COURT ABOUT THE TRIAL JUDGE'S REMARK AND HER CONFUSION THAT SHE HAD TO ISSUE A NEW DECISION TO COVER UP AND TRY TO CORRECT HER GLARING MISTAKES OF HER TWO PREVIOUS DECISIONS. THE TRIAL JUDGE'S TRIAL MISTAKES AND HER BEHAVIOR IS PLAIN ERROR AND REVERSIBLE ERROR WHICH IMPAIRED THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO A FAIR TRIAL. THE TRIAL JUDGE SHOULD KNOW TO INTERFERE WITH THE UPCOMING MISTAKES AND ERRORS THAT WERE BEING MANIFESTED AND HAD THE POTENTIAL TO CREATE AN UNFAIR TRIAL FOR THE DEFENDANT, WHICH IS EXACTLY WHAT OCCURRED DUE TO THE TRIAL JUDGE'S DELIBERATE OVERSIGHT IN ORDER TO CONVICT THE DEFENDANT FOR THE ABOVE STATED REASONS, THE DEFENDANT CONVICTION MUST BE REVERSED.

13. IF ANY OF THE GROUNDS LISTED ABOVE WERE NOT PREVIOUSLY PRESENTED IN ANY OTHER COURT STATE OR FEDERAL, BRIEFLY STATE WHAT GROUNDS, AND GIVE YOUR REASONS WHY IT WAS NOT RAISED IN THE STATE OR FEDERAL COURTS.

14. DO YOU HAVE ANY PETITION OR APPEAL NOW PENDING IN ANY COURT
 YES ☐ NO ☒

15. GIVE THE NAME AND ADDRESS, IF KNOWN, OF EACH ATTORNEY WHO REPRESENTED YOU IN THE FOLLOWING STAGES OF THE JUDGMENT'S ATTACKED HEREIN:

(A) AT PRELIMINARY HEARING: BRIAN J. BARTLEY ESQ

(B) AT ARRAIGNMENT AND PLEA: BRIAN J. BARTLEY ESQ

D. GROUND FOUR: IMPEACHMENT OF DEFENDANT BY EVIDENCE OF HIS PRIOR FELONY DRUG CONVICTION CONSTITUTED REVERSIBLE ERROR....

SUPPORTING FACTS: ON 10/17/03 THE TRIAL COURT IMPROPERLY ADMITTED EVIDENCE OF A PRIOR DRUG CONVICTION THAT WAS ELICITED BY THE PROSECUTOR IN AN EFFORT TO PORTRAY THE DEFENDANT AS A DISHONEST PERSON DUE TO A PRIOR DRUG CONVICTION WHICH IS PROHIBITED BY DELAWARE RULE 609. THIS EVIDENCE WAS NOT RELEVANT TO THE STATES PRIMA FACIE CASE AGAINST DEFENDANT. IT WAS ONLY INTRODUCED TO PRODUCE DEFENDANT IN FRONT OF THE JURY TO PORTRAY THE DEFENDANT AS DISHONEST AND AS A DRUG DEALER TO FURTHER DISCREDIT THE DEFENDANT DURING THE DEFENDANT'S TESTIMONY AT TRIAL. THIS ERRONEOUS ADMISSION REQUIRES REVERSAL UNDER FEDERAL LAW AND IS SETTLED DELAWARE LAW, WHICH CONSTITUTED PLAIN ERROR...

E. GROUND FIVE: TRIAL COURT'S FAILURE TO INSTRUCT JURY ON ALIBI REQUIRES REVERSIBLE ERROR WHICH CONSTITUTED PLAIN ERROR....

SUPPORTING FACTS: DEFENDANT ASSERTS THAT ON 10/17/03 HIS SUBSTANTIAL RIGHTS WERE VIOLATED WHEN THE TRIAL COURT JUDGE FAILED TO INSTRUCT THE JURY CONCERNING CLAIM OF ALIBI. WHEREAS, THE DEFENDANT TESTIFIED ON HIS BEHALF AND HAD SAID TO PROVE HIS ALIBI DURING THE STATES CROSS-EXAMINATION OF DEFENDANT. UPON THE CROSS-EXAMINATION OF DEFENDANT BY THE STATE, DEFENDANT TESTIFIED THAT HE WAS NEXT DOOR WITH FRIENDS ON THE NIGHT OF THE ALLEGED RAPE. THIS WAS A SHOWING OF FACTS INCONSISTENT WITH AN ESSENTIAL ELEMENT OF THE CRIMINAL CHARGE. WHEREAS IT IS SETTLED LAW WHERE AN ACCUSED IS ENTITLED TO HAVE THE JURY SPECIALLY INSTRUCTED THAT WHERE THE PRESENCE OF THE DEFENDANT AT THE TIME AND PLACE OF THE ALLEGED CRIME IS AN ESSENTIAL LINK IN THE CHAIN OF PROOF. WHEREFORE THE DEFENDANT ASSERTS THAT HE WAS DEPRIVED OF A FAIR TRIAL AND OF SUBSTANTIAL RIGHTS WHEN THE TRIAL COURT JUDGE FAILED TO INSTRUCT THE JURY ON THE CLAIM OF ALIBI CONSTITUTED REVERSIBLE ERROR...

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(c) At trial BRIAN J. BARTLEY ESQ(d) At sentencing BRIAN J. BARTLEY ESQ(e) On appeal BRIAN J. BARTLEY ESQ(f) In any post-conviction proceeding
DERIOUS J. JOHNSON(g) On appeal from any adverse ruling in a post-conviction proceeding
DERIOUS J. JOHNSON

BRIAN J. BARTLEY ESQ
 ASSISTANT PUBLIC DEFENDER
 DEL. BAR I.D. NO. 2029
 CARVEL STATE OFFICE BUILDING
 820 N. FRENCH STREET
 WILMINGTON, DE 19801

ATTORNEY FOR DEFENDANT

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Derious J. Johnson
 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4/19/05
 Date

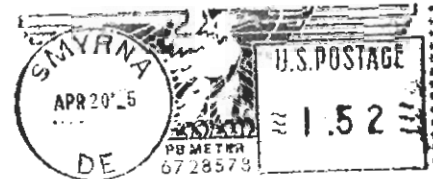
Derious J. Johnson
 Signature of Petitioner

SBI# 280324 UNIT 21C-4-11

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19973



U.S.M.S.
X-RAY

* LEGAL MAIL *

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT

844 N. KING STREET, JACKSON 18

WILMINGTON, DELAWARE

19801-3570